

ORIGINAL

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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEC 09 2004

JAMES R. CARSEN, CLERK
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STARK BROTHERS NURSERIES AND
ORCHARDS COMPANY, an Illinois
corporation; VAN WELL NURSERY,
INC., a Washington corporation; WILLOW
DRIVE NURSERY, INC., a Washington
corporation;

Plaintiffs,

v.

BENTON COUNTY PARCEL NO. 1-
1695-1000-002-000; BENTON COUNTY
PARCEL NO. 1-1695-10111-47002;
BENTON COUNTY PARCEL NO. 1-
1695-40107-35002; BENTON COUNTY
PARCEL NO. 1-1695-40108-87002;
BENTON COUNTY PARCEL NO. 1-
2195-1000-002-000; BENTON COUNTY
PARCEL NO. 1-3205-300-0001-000;
PEOPLES BENEFIT LIFE INSURANCE
CO., an Iowa corporation; U.S. BANK
NATIONAL ASSOCIATION, a national
banking association; and WILLIAM
GOBLE, an individual,

Defendants.

CV-04-465-AAM

CAUSE NO.

COMPLAINT FOR PLANT
PATENT AND TRADEMARK
INFRINGEMENT, FALSE
DESIGNATION OF ORIGIN,
UNFAIR COMPETITION, AND
EQUITABLE RELIEF

COMPLAINT FOR PLANT PATENT AND TRADEMARK INFRINGEMENT,
COUNTERFEITING, FALSE DESIGNATION OF ORIGIN, UNFAIR
COMPETITION, AND EQUITABLE RELIEF

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3 Stark Brothers Nurseries and Orchards Company, an Illinois corporation,
4 Van Well Nursery, Inc., a Washington corporation, and Willow Drive Nursery,
5 Inc., a Washington corporation, allege:
6

7 **NATURE OF THE ACTION**

8 1. Plaintiffs' claims arise under:
9

10 1.1. The Patent Act of the United States, 35 U.S.C. § 101 *et seq.*, for
11 plant patent infringement.

12 1.2. The Lanham Act, 15 U.S.C. § 1051 *et seq.*, for trademark
13 infringement, counterfeiting, false designation of origin, and unfair competition.
14

15 1.3. The Washington Consumer Protection Act, RCW 19.86.010. *et*
16 *seq.*, for unfair acts and practices.
17

18 Plaintiffs seek equitable relief, damages, enhanced damages, costs of suit
19 and reasonable attorney's fees as allowed under federal and state law.
20

21
22 **PARTIES**

23 2. Plaintiffs are:

24 3.1 Stark Brothers Nurseries and Orchards Company (***Stark***
25 ***Brothers***), an Illinois corporation, with its principal place of business at Louisiana,
26 Missouri.
27

1 3.2 Van Well Nursery, Inc. (*Van Well*), a Washington corporation,
2 with its principal place of business at Wenatchee, Washington.

3
4 3.3 Willow Drive Nursery, Inc. (*Willow Drive*), a Washington
5 corporation, with its principal place of business at Ephrata, Washington.

6 3. Defendants are:

7
8 3.1. Benson County Parcel No. 1-1695-1000-002-000, real property
9 situated in Benson County, Washington (*Property*). This action seeks *in rem*
10 equitable relief against infringing trees growing on said real property.

11
12 3.2. Benson County Parcel No. 1-1695-10111-47002, real property
13 situated in Benson County, Washington (*Property*). This action seeks *in rem*
14 equitable relief against infringing trees growing on said real property.

15
16 3.3. Benson County Parcel No. 1-1695-40107-35002, real property
17 situated in Benson County, Washington (*Property*). This action seeks *in rem*
18 equitable relief against infringing trees growing on said real property.

19
20 3.4. Benson County Parcel No. 1-1695-40108-87002, real property
21 situated in Benson County, Washington (*Property*). This action seeks *in rem*
22 equitable relief against infringing trees growing on said real property.

23
24 3.5. Benson County Parcel No. 1-2195-1000-002-000, real property
25 situated in Benson County, Washington (*Property*). This action seeks *in rem*
26 equitable relief against infringing trees growing on said real property.
27

1 3.6. Benson County Parcel No. 1-3205-300-0001-000, real property
2 situated in Benson County, Washington (**Property**). This action seeks *in rem*
3 equitable relief against infringing trees growing on said real property.
4

5 3.7. Peoples Benefit Life Insurance Co., (**Peoples**), an Iowa
6 corporation, with its principal place of business in Cedar Rapids, Iowa.
7

8 3.8. U.S. Bank National Association (**U.S. Bank**), a federally
9 chartered banking association, which has its principal place of business in
10 Cincinnati, Ohio. U.S. Bank is the successor in interest by merger to U.S. Bank of
11 Washington, N.A., West One Bank, a Washington state banking corporation and
12 Yakima Valley Bank, a Washington state banking corporation. U.S. Bank
13 maintains 196 offices in the state of Washington, including the Eastern District of
14 Washington. U.S. Bank continues to claim an interest in the real property that is
15 the subject matter of this litigation and is therefore named as a party defendant.
16
17

18 3.9. William Goble (**Goble**), an individual, residing in Benton
19 County, Washington and the owner of record of the Property against which this
20 action is asserted. No claims for relief are asserted against Mr. Goble. All Claims
21 being made are against the property for the destruction of infringing trees and are
22 for post petition conduct by the secured lenders seeking to foreclose mortgage
23 interests in the property subject to suit herein. Mr. Goble is named solely as the
24 owner of record of the property; the same having been abandoned by the
25
26
27

1 Bankruptcy Estate in *In re Goble*, Eastern District of Washington Bankruptcy No.
2 03-01918-R21.
3
4

5 **JURISDICTION AND VENUE**

6 4. Plaintiffs' claims arise under the laws of the United States related to
7
8 plant patents (35 U.S.C. § 161 *et seq.*), the Lanham Act (15 U.S.C. § 1051 *et seq.*)
9 and Washington state unfair business practices (R.C.W. 19.86.010 *et seq.*).
10

11 5. This court has original jurisdiction of this action under Title 28 U.S.C.
12 §§ 1331, 1338(a), and 1338(b) and supplemental or pendant jurisdiction over the
13 remaining claims under 28 U.S.C. § 1367(a).
14

15 6. This Court has personal jurisdiction over Defendants by reason of the
16 transaction of business in the State of Washington.

17 7. The claims for relief under Washington State law are joined as
18 substantial and related claims; accordingly, subject matter jurisdiction for these
19 claims for relief is conferred on this Court pursuant to the doctrines of pendant,
20 ancillary, and supplemental jurisdiction.
21

22 8. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c),
23 28 U.S.C. § 1400(b), and RCW 4.28.185(1)(a) and (b).
24
25
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27

FACTS COMMON TO ALL CLAIMS FOR RELIEF

9. Plaintiffs are the owners, or exclusive licensees, of the plant patents and/or trademarks identified and described on Schedule A to this Complaint.

10. On information and belief, Defendant Goble owns the Property; and the Bankruptcy Court has ordered that the Property be abandoned and therefore title is held by Goble outside of bankruptcy.

11. On information and belief, as a result of the entry of the Notice of Abandonment, a copy of which is annexed hereto as Appendix 1 for purposes of reference, Defendant Peoples, through its mortgage agreement with Goble, controls the day-to-day farming activities of the Property, and has direct liability for acts of infringement and indirect liability for inducement and contributory infringement.

12. On information and belief, U.S. Bank continues to claim an interest in the property that is the subject of this litigation through its own motion for leave from the automatic stay to proceeding against the assets of the Goble estate. Please see Appendix 2 attached hereto.

13. On information and belief, the Property is planted with a number of commercial fruit trees infringing at least one plant patent or trademark identified on Schedule A.

1 14. Peoples, or a predecessor-in-interest, loaned monies to Goble secured
2 by the real property and the trees that infringe the intellectual property in suit in
3 this litigation.
4

5 15. The claim of an interest in the Property by Defendants Peoples and
6 U.S. Bank through a recorded mortgage and perfected security interest in trees that
7 infringe intellectual property in suit herein, and the use of those trees to accomplish
8 the purpose of securing Goble's debt to the Defendant and as collateral for loans or
9 other extensions of credit to Goble, constitute a use in commerce and, therefore, an
10 act of direct infringement under the patent and trademark laws of the United States.
11
12

13 16. Further, a security interest in infringing trees is invalid and in
14 contravention of federal law. Any act to enforce the security interest held by
15 Defendant Peoples or U.S. Bank is inimical to the rights of the owner of the
16 trademark to police its mark and to assure the quality of products bearing the mark
17
18

19 17. Defendants Peoples and U.S. Bank fostered, promoted and preserved
20 the continuation of infringement by Goble of the intellectual property that is
21 asserted herein by providing financing to Goble to farm the infringing trees.
22 Defendant Peoples and U.S. Bank thereby aided, abetted, contributed to and
23 induced the continuing infringement of plant patents and trademarks issued by the
24 United States of America in violation of 35 U.S.C. § 271 and 15 U.S.C. § 1114 and
25 of the State of Washington in violation of RCW 19.86.020.
26
27

1 18. On information and belief, Goble neither has, nor at any time had, a
2 license to make, use, or sell or offer to sell (i.e. farm) trees that are covered by the
3 plant patent or patents identified on Schedule A.
4

5 19. On information and belief, Goble had no license to use in commerce
6 the trademark(s) identified on Schedule A, and that the use of the trademark(s) by
7 Defendants is likely to cause confusion, or mistake, or to deceive with respect to
8 the trademark(s) identified on Schedule A, or is likely to cause confusion or to
9 deceive as the affiliation, connection or association with licensed trees, or as to the
10 origin, sponsorship or approval of the plantings by nurseries holding said marks.
11
12

13 20. Plaintiffs further believe, and therefore allege, that Peoples and U.S.
14 Bank, as the secured creditors, knowingly extended or continued to extend credit to
15 Goble claiming a security in the land and plants thereon which infringe the rights
16 held by Plaintiffs.
17

18 21. Plaintiffs seek from Defendant Peoples, but not from Goble or U.S.
19 Bank, damages in the amount of at least \$6.50 per tree as lost profits for each tree
20 identified herein that infringe either the patent(s) or trademark(s) asserted herein.
21

22 22. Plaintiffs believe, and therefore allege, that the infringement of
23 Defendant Peoples is willful and that Plaintiffs are entitled to, and therefore
24 request, that this Court declare that this case is exceptional as provided in 37
25 U.S.C. § 284 and 285 and 15 U.S.C. § 1117 and award enhanced damages,
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1 Plaintiffs' attorney's fees incurred herein and the costs of suit, as against
2 Defendant Peoples.
3
4

5 **FIRST CLAIM FOR RELIEF**
6 **Infringement of Plant Patents**

7 23. Defendants have infringed and continue to infringe directly,
8 contributorily, and/or by inducement, the claims of Plant Patents identified on
9 Schedule A, or other patents in plants, by asexually propagating, using, offering for
10 sale, selling, or importing plants embodying patented plants.
11

12 24. Plaintiffs have been and continue to be damaged by the acts of
13 Defendant Peoples in such amounts as may be proven at trial, but in no event less
14 than \$6.50 per tree for each infringing tree being farmed on the Property.
15

16 25. The acts of patent infringement are willful.
17

18 26. Plaintiffs are entitled to an award of lost profits against Defendant
19 Peoples and injunctive relief in the form of destruction of infringing trees, as to all
20 Defendants.
21

22 **SECOND CLAIM FOR RELIEF**
23 **Trademark Infringement and False Designation of Origin**

24 27. Defendants have used and continue to use the trademarks identified on
25 Schedule A to establish the provenance of trees on the property in suit, or other
26 registered or common trademarks, on or in connection with the offer for sale, and
27

1 sale or assignment of interests in infringing trees, fruit and orchards planted with
2 unlicensed, and therefore infringing trees, which trademark use falsely designates
3 that those trees are duly licensed by and originated from or are approved,
4 authorized by, or associated or affiliated with the owner of the trademarks in
5 violation of 15 U.S.C. §§ 1114 and 1125(a).
6

7
8 28. Defendants' acts of infringement and false designation of origin have
9 caused, and will continue to cause Plaintiffs damages in such amount as shall be
10 proven at trial.

11
12 29. Defendants' acts of trademark infringement and false designation of
13 origin are willful.

14 30. Plaintiffs are entitled to an award of lost profits, the profits of
15 Defendant Peoples attributable to the infringement and false designation of origin,
16 together with enhanced damages as permitted by law and injunctive relief in the
17 form of destruction of infringing trees, as to all Defendants or in the alternative,
18 statutory damages as permitted by 15 U.S.C. § 1117.
19
20

21
22 **THIRD CLAIM FOR RELIEF**
23 **Washington Consumer Protection Act Violation**

24 31. The unfair acts and practices of Defendants have impacted and will
25 continue to impact the public interest, constitute repeated violations of intellectual
26 property rights of the owners thereof, and will have a great likelihood of future
27

1 repetition, and therefore constitute a violation of the Washington Consumer
 2 Protection Act, R.C.W. 19.86.010 *et seq.*

3
 4 32. Defendants' unfair acts and practices entitle Plaintiffs to all of the
 5 equitable and just remedies at law including injunctive relief, enhanced damages,
 6 costs of suit, and attorney's fees as allowed by R.C.W. 19.86.090. A copy of this
 7 Complaint has been supplied to the office of the Attorney General for the State of
 8 Washington, as required by RCW 19.86.095.
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10
 11
 12 **FOURTH CLAIM FOR RELIEF**
 13 **Destruction of Trees**

14 33. Defendants' infringement of the Plant Patent(s) and trademark(s) in
 15 suit has damaged and will continue to damage Plaintiff, and its assignors.

16 34. Pursuant to 35 U.S.C. § 283 and 15 U.S.C. § 1118, Plaintiffs are
 17 entitled to an award for injunctive relief in the form of an order compelling
 18 Defendants to destroy all infringing trees.
 19

20
 21
 22 **PRAYER**

23 Plaintiffs pray that judgment be entered as follows:

24 A. A preliminary and permanent injunction enjoining Defendants and
 25 their agents, employees and all other persons in active concert or participation with
 26 Defendant, from infringement of the '839 Plant Patent, 35 U.S.C. § 283, or any
 27

1 other patent, and from infringement of the SCARLET SPUR[®] trademark or any
2 other trademark, 15 U.S.C. § 1116 and RCW 19.86.090;

3
4 B. To deter continued infringement, an order of impoundment and order
5 that defendants Peoples and U.S. Bank destroy all infringing trees on the Property,
6 including the trees infringing the intellectual property identified in Schedule A, or
7 any other patent(s) or trademark(s) found to be infringing as permitted by 35
8 U.S.C. § 283 and 15 U.S.C. § 1118;

9
10 C. A money judgment against Defendant Peoples pursuant to 35 U.S.C.
11 §§ 284 and 285 for damages in an amount of at least \$6.50 for each tree that
12 infringes a patent in suit, or any other pertinent patent, or in such additional
13 amount as may be proven at trial adequate to compensate Plaintiffs for Defendants'
14 infringements of each plant patent in suit, together with treble damages and lost
15 profits, prejudgment interest thereon, and statutory costs;

16
17 D. A money judgment against Defendant Peoples pursuant to 15 U.S.C. §
18 1117 and R.C.W. 19.86.090 for damages in an amount of not less than \$6.50 for
19 each tree that infringes a trademark in suit, or any other trademark found to be
20 infringed, or in such amount as may be proven at trial, or in lieu thereof and profits
21 of Defendant Peoples attributable to the infringement, together with enhanced
22 damages for willful misappropriation as permitted by 15 U.S.C. § 1117 and
23 R.C.W. 19.86.090 and prejudgment interest thereon;

1 E. For an award of Plaintiffs' attorneys fees and costs against Defendant
2 Peoples, under applicable statutes, including 37 U.S.C. § 285, 15 U.S.C. § 1117
3 and R.C.W. 19.86.090; and
4

5 F. For such other and further relief as the court deems just and equitable.
6
7

8 DATED December 8, 2004.

Respectfully submitted,

STRATTON BALLEW PLLC

By: 

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